

Vitamins and dietary supplements generally qualify for the reduced rate of tax applicable to food. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

February 5, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated January 18, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are writing to request a determination on the applicability of the sales/use tax of your state to a product sold by our company. COMPANY is a network marketing company which sells nutritional, personal care and other consumer products. The products are distributed through independent contractors (Team Members) who recruit other Team Members into their downline. COMPANY collects and remits sale/use tax on behalf of it's Team Members pursuant to an agreement with your state.

We request a ruling on the sales tax treatment of the following product.

Essential Calcium

The labels for this product is attached for your reference.

We would greatly appreciate it if you would identify the basis in statute, regulation or ruling for your determination. Please send your response to the following address:

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Thank you for your prompt consideration of this matter. If you have any questions please do not hesitate to contact the undersigned at #####.

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food,

drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the high rate. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. Generally, if vitamins or dietary supplements are intended by the manufacturer for human use and purport on the label to have medicinal qualities, such vitamins or dietary supplements are considered to be drugs and are taxed at the low rate of tax. However, since not many vitamins or dietary supplements are likely to have medicinal claims, the vitamins or dietary supplements may be considered to be a food. See Section 130.310(b)(1).

The manner in which food is taxed depends upon the nature of the establishment that is selling the food. Retailers who provide seating or facilities for on-premises consumption of food generally incur tax at the high rate on all food sales (including bulk or grocery type items). However, if establishments sell both food that has been prepared for immediate consumption and bulk or grocery type items and also provide facilities for on-premises consumption, the lower rate of tax may be charged on the bulk or grocery type items only if the dining facilities are physically partitioned from the area where food not for immediate consumption is sold and these facilities utilize a separate means of collection of receipts. See 86 Ill. Adm. Code 130.310(b)(3).

If establishments have no seating or facilities for on-premises consumption of food, the tax rate incurred on food sales is determined by whether the majority (over 50%) are bulk or grocery type sales or are sales for immediate consumption. If more than 50% of all food sales are for immediate consumption, the retailer must charge the high rate on all food sales. If more than 50% of all food sales are bulk or grocery type items, all food sales are taxed at the low rate with the exception of hot foods, food that has been prepared for immediate consumption, alcoholic beverages, and soft drinks. See Section 130.310(a). Food for immediate consumption is defined in the regulation as hot food and food made ready by the retailer to be eaten without substantial delay after the final stage of preparation by the retailer.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel